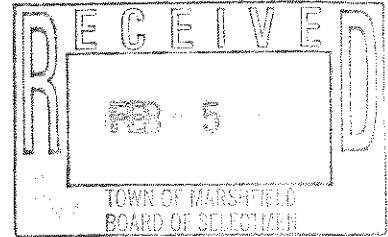


GALVIN & GALVIN, PC

Attorneys and Counselors at Law

A Professional Corporation

10 Enterprise Street, Suite 3
Duxbury MA 02332-3315
(corner of Rtes 3A & 139)



Robert W. Galvin, Esq.
Robert E. Galvin, Esq.
William J. Galvin, Esq. (1898- d.1995)

Tel: (781) 934-5678 / (781) 834-4224
Facsimile: (781) 837-1030

February 4, 2016

VIA EMAIL mbusby@MassHousing.com & OVERNIGHT DELIVERY

Michael J. Busby, Mass Housing 40B Specialist
Comprehensive Permit Program
Massachusetts Housing Finance Agency
One Beacon Street
Boston, Massachusetts 02108

Re: **RESPONSE OF THE TOWN OF MARSHFIELD**
Bridle Path Village, MassHousing Project #SA-14-206

Dear Mr. Busby:

Please be advised that I am the duly appointed Town Counsel for the Town of Marshfield, Massachusetts. I have been specifically asked by the Marshfield Board of Selectmen and the Town Administrator to respond on their behalf to the proposed Comprehensive Permit Site Approval Application which was provided to the town and

On behalf of the Town of Marshfield Board of Selectmen (the "Board") and the Town of Marshfield (the "Town"), I would like to take this opportunity to provide MassHousing our comments on the proposed Bridle Path Village project proposed off of Ferry Street in Marshfield, Massachusetts.

Based on my review and the town's review of the Site Approval Application to the Massachusetts Housing Finance Agency (Mass Housing), Bridle Path Village project involves the proposed construction of forty (40) rental units, including nineteen (19) duplexes, two (2) single family homes, and one (1) commercial/office building with storage¹, on an alleged 15.1 acre site accessed off of Ferry Street (the "Project"). In

¹ Based on the tabulation provided the Project will contain twenty-eight (28) one bedroom, eight (8) two bedroom units, and four (4) three bedroom rental units (total of 56 bedrooms).

accordance with Mass. Gen. L. c. 40B, ten (10) of the proposed rental units are intended to be restricted units for low and moderate income residents.

Please be advised that the Board of Selectmen on behalf of the Town of Marshfield is opposed to the proposed project, as designed, since the plans and supporting data conclusively establish that (a) the site of the proposed Project is not appropriate for residential development of this scale and magnitude, (b) the conceptual Project design is inappropriate for the site on which it is located, taking into consideration the conceptual site plan, topography and environmental limitations; and, (c) the proposed Project is simply not financially feasible within the housing market in which it will be situated. The Town also wishes to identify several inaccuracies with the application and some additional concerns about the project. The specific bases for Town's conclusions are set forth below.

1. Background about the Town of Marshfield

Marshfield is located approximately thirty miles southeast of Boston, twelve miles north of Plymouth, and sixty miles northeast of Providence, Rhode Island. The Town's land area is approximately 29 square miles, and is bounded by the towns of Norwell and Pembroke to the west, Scituate to the north, and Duxbury to the south. Marshfield's land uses are largely defined by its distinct water features, including the North and South Rivers, the Massachusetts Bay to the east, Green Harbor to the south, and the large number of fresh and saltwater wetlands that dot the Town's landscape. Marshfield Master Plan (hereinafter "MP"), at p. 2-2.²

Approximately sixty-five (65) percent of the Town's land area includes agriculture, forestry, recreational open space, and protected wetlands. About one third (1/3rd) of Marshfield is residential land uses and three (3%) percent is commercial, industrial, and transportation-related. Id. (citations omitted.)

Residential development is largely focused within several neighborhoods being confined to areas that are developable because of the constraints posed by the large areas of saltwater and freshwater wetlands in Marshfield. In general, residential development in Marshfield is characterized by a more rural development pattern in the northern half of Marshfield and a denser development pattern along the Marshfield coast, the Downtown area, and southern half of Marshfield. Marshfield's primary residential neighborhoods include: North Marshfield, Marshfield Hills, Sea View, Green Harbor, Brant Rock, Ocean Bluff, Fieldston and Rexhame. Id at 2-8 to 2-9.

In contrast, to the lower density development in the northerly area of North Marshfield and Marshfield Hills, there is very dense residential development in several multi-family communities located along Route 139 which passes through the center of Marshfield from State Highway Route 3. There also is very dense residential development

² A complete copy of the 2015 Master Plan is included with this Letter.

located along Marshfield's coast with houses on small lots. Id. at 2-9. The Rexhame neighborhood near Rexhame Beach on the Humarock-Rexhame peninsula has large single-family homes on small lots (about 5,000 square feet in size). Just south of Rexhame, the Fieldston, Ocean Bluff and Brant Rock neighborhoods also consist of large to medium housing types on small lots along Ocean Street. As mentioned earlier in this chapter, this development pattern harkens back to the early 1920s when Marshfield encountered a building boom of seasonal cottages along its southeastern shoreline near the Town's beaches.

In all, there are six hundred eighty-three (683) acres of land in Marshfield or 3.7% of the town's land area used for higher density residential development and 1140 acres of land in Marshfield or 6.2% of the town's land area used for medium density development.³ Id. at 2-11.

2. The Town's Affordable Housing and Housing Production Goals

The Town is very fortunate to have both a Marshfield Housing Authority and an active Marshfield Housing Partnership who are in charge of implementing and maintaining an affordable housing program in the community. MP at 3-16.

The Housing Partnership which is supported by an annual appropriation at Town Meeting and with Community Preservation funds which are separately appropriated to support affordable housing.

The Marshfield Housing Partnership's current mission is to "identify the needs of residents for affordable housing and develop strategies that are consistent with other town priorities to meet these needs." Described in another way, Marshfield's general housing goal is to provide a variety of housing choices for current and future residents with price and affordability playing a significant role in achieving this objective. The Marshfield Housing Partnership has developed the Town of Marshfield Housing Production Plan, most recently updated in May 2014 from the 2009 Community Housing Plan. The Housing Production Plan has been officially approved by the Department of Housing and Community Development (DHCD).⁴ MP at 3-1.

The Town of Marshfield's 2014 Housing Production Plan lists the following housing goals which are also goals within the Town's 2009 Housing Production Plan and the 2004 Community Housing Plan:

³ Higher Density Residential includes multi-family housing and housing with lots smaller than 1/4 acre. Medium Density is 1/4 to 1/2 acre lots.

⁴ A copy of the Town's Updated Housing Production Plan is attached hereto.

- To meet local housing needs by enhancing housing choices along the full range of incomes and to promote social and economic diversity and the stability of individuals and families living in Marshfield;
- To leverage other public and private resources to the greatest extent possible;
- To ensure that new housing creation is harmonious with the existing community; and,
- To surpass the 10 percent state standard for affordable housing.

As evidence of affordable housing opportunities in Town, the Master Plan notes roughly half of the condos that were sold last year (2014) were priced within the means of those households earning at or below 80% of area median income, and these units represent opportunities within the town's homeownership market for starter households or first-time home buyers as well as seniors looking to downsize. Also the 1,384 rental units analyzed in the Master Plan, 203 units, or 14.7%, rented for less than \$750, documenting the existence of some affordable rental opportunities in Town. MP at 3-15.

In furtherance of the affordable housing objectives of the Town, in addition to maintaining affordable housing opportunities, the Marshfield Housing Partnership and Housing Authority offer the Marshfield Housing Opportunity Purchase Program (MHOPP), a financial assistance program for low-income first-time homebuyers to purchase single-family homes or condominiums in Marshfield. The program has been reportedly successful in creating affordable housing units out of existing stock by tying an Affordable Housing Restriction to the property deed in perpetuity and to date, Marshfield has developed 17 affordable units through the MHOPP program. Id.

The Town of Marshfield affordable housing has now reached 5.62% representing continued progress towards its goal of 10.00%.

3. The Development Plan and the Subject Property

Although MassHousing has identified the property as containing fifteen and one tenth (15.1) acres, in actuality, only five and nine-tenth (5.9) acres of the site are actually developable as a consequence of the property containing nine and two-tenths (9.2) acres of non-buildable habitat land for an endangered species.

Of this acreage, the applicant's representative, Peter Armstrong, has irrevocably granted the Town a license to maintain an encroaching portion of a stormwater basin and supporting headwall and grading on the subject property and executed a Purchase and Sale Agreement with the Town to sell it approximately five (5.0) acres of land abutting the project site for the sum of \$50,000.00 within sixty days after completion of all work required by a Settlement Agreement or four years. In the event that the property cannot be acquired, Mr. Armstrong has agreed to grant an easement to maintain the basin and its grading on the property.

The application also states the property has a forty (40) foot right of way road access to the project site. This is not completely correct. In fact, the site gains access from Ferry Street by crossing the Town's Bridle Path (non-vehicle) and down an easement over land under the care and custody of the Town's Department of Public Works. There is no agreement that the town property may be used as a trucking route for earth removal or hauling activities.

a. Impact in the Water Resource Protection District.

As was evident from the site visit, the portion of the property proposed for development is actually located off of Ferry and Grove Streets. The area is zoned under the Marshfield Zoning Bylaw as Residential Rural (R-1) and is also located within the Town's Water Resource Protection Overlay District (WRPD). The R-1 district is principally a single family residential district and the WRPD is a superimposed district whose purpose is to prevent contamination of and preserve the quantity and quality of ground and surface water which provides existing water supply for the Town's residents, institutions, and businesses.

The effect of the Water Resource Protection Bylaw is to limit the overall amount of nitrogen (5 PPM) allowed to be placed into the Zone II.⁵ Town meeting (due to past contamination of Town wells) approved the Water Resource Protection Bylaw that specifically restricts the amount of nitrogen being placed into the Town's well fields. The Town's Housing Production Plan specifically states that protection of the Town's drinking water is the top priority (see pg. 5 D. second bullet).

There are two Town drinking water wells currently in use located within a half mile from the proposed development known as the Ferry Street Well and Church Street Wells. The application submitted for this project abjectly fails to show any efforts whatsoever to reduce nitrogen from the proposed development's subsurface disposal system which said nitrogen will directly impact the water quality of two of the most significant sources of drinking water in the town. In fact, the substantial quantity of earth removal, discussed below, which the applicant is proposing to engage in significantly and materially places the point of discharge to the groundwater perilously close in a very permeable soil condition increasing the probability of an adverse impact to the town's water supply.

⁵ According to DEP, Zone II is:

That area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).

In general, projects which will discharge 10,000 gallons or more per day of wastewater into the ground are regulated by MassDEP through the Ground Water Discharge Permit Program ("the Program") regulations at 314 CMR 5.00 and require potential dischargers to seek plan approval and obtain a groundwater discharge permit. Those regulations also impose limitations on the amount and type of pollutants, including more prominently nitrogen, allowed to be discharged to assure that the receiving waters meet minimum water quality standards established by those regulations as well as the Massachusetts Surface Water Quality Standards, 314 CMR 4.00.

In order to arrive at quantity of wastewater which is less than the amounts required to trigger the need to construct an expensive wastewater treatment facility under state guidelines, the applicant appears to be asking MassHousing during site eligibility and the town to accept, on faith, that more than fifty percent of the units will be one bedroom units and used as such when the greatest need for housing in the town is for two (2) bedroom units.

Faced with a likely design that will only need local Board of Health approval, the proposed subsurface sewage disposal system unless it is equipped with essential nitrogen reducing technologies which are very expensive and time-consuming to install and maintain, will exceed the local standards and unlawfully impact the groundwater quality in a materially adverse way.

b. Impact on Water Resource Protection District by Earth Removal.

During the 1960's and 1970's, the Town of Marshfield witnessed that there were a number of large gravel operations scattered around the town and a large amount of sand and gravel was being removed for projects such as the expansion of Logan Airport, including from the subject property and abutting properties. In the early 1970s, the Town Meeting eventually curtailed gravel removal operations and no longer allows it to be removed from the Town by General Bylaw and regulation.

The subject property goes from elevation 65 feet on the western side of the property, up to elevation 120 feet in the middle of the property and drops slightly back to elevation 110 feet to the east. According to the proposed site plan, roughly 50 to 60 feet of earth is proposed to be removed from a large portion the property, necessarily denuding⁶ the site of all vegetation in order to flatten the property to locate the proposed forty (40) units.

It is estimated by the Town Engineer, Rod Procaccino, PE., that the applicant will need to remove approximately 400,000 cubic yards of earthen materials in order to arrive at the elevations at which the applicant is seeking to construct the units and that based on the anticipated truck route with ordinary trucking capable of removing the soil it would take three (3) years with sixty truck trips per day in order to excavate the remove the soil

⁶ There is no conceptual landscape plan.

creating a certainty of irreparable harm to the neighborhood and town. *See also attached Peer Review Report of David Garson, AICP, of Woodard & Curran, Inc.⁷ of Dedham, Massachusetts attached hereto at 13-14.* Said activities will have a significant air quality impacts from earth mining activities and trucking as detailed in the report.

The proposed gravel removal operation will result in new housing units being constructed into a 50 to 60 foot cut into the side of the hill with steep slopes to the south and east. Due to the proposed grading, the site plan provides little room between units and a massive central parking lot.

As discussed in the Woodard & Curran report, this same type of earth mining activity was previously proposed to the Marshfield Board of Selectmen by the applicant, Peter Armstrong, in 2011, with then proposed end project being a youth soccer fields facility. On June 14, 2011, the Marshfield Board of Selectmen voted unanimously to deny a prior earth removal permit due to adverse air and groundwater quality impacts. *Attached hereto is a copy of the Meeting Minutes of the Marshfield Board of Selectmen from June 14, 2011, containing the vote rejecting as injurious to the public water supply an equivalent quantity of earth removal.* Mr. Armstrong never appealed the decision of the Board of Selectmen under Mass. Gen. L. c. 249 §4 and the decision precluding earth removal became final.

As finally noted in the Woodard & Curran report 5/3/11, it was the opinion of the firm that the project as originally proposed and designed "will have a substantial and long term adverse impact in terms of unavoidable consequences to aquifer protection, traffic impacts and air quality" but that there was an alternative (alternative 4) which would result in raised grades of the proposed fields which could be technically viable and reduce the adverse impacts of the former proposed project.

The Town Planner Greg Guimond⁸, as noted in a *Presentation* attached hereto, has opined that significant reduction in the amount of sand and gravel to be removed from the site by gradually increasing the elevation of the site heading to the east would lessen the impact to abutters, provide more protection for filtering spills on the site and getting into the water table and reduce the bowl effect for future residents.

c. The Project cannot be a Pretext for unlawful Earth Removal.

Included in the application in Section 5 of the Site Eligibility Application is an initial pro forma (Page 14). The applicant affirms that he has private equity in the form of cash equity in the amount of \$1,649,404.00 available to proceed with the project and

⁷ Woodard & Curran is a leading water supply and wastewater consulting firm in the northeast and supplied geotechnical and water impact analysis review to the Town.

⁸ Mr. Guimond notes also that the highest water table in the area is 49 ft el. and the applicant is proposing to dig down to 56 ft. el.

estimates, more importantly, that applicant will have/there will be a "gravel reimbursement" of \$1,800,000.00. Assuming these significant investments, there would then be permanent financing presumably with South Shore Bank of \$4,102,000.00.

The Town is concerned that since the applicant once before proposed to mine the property of its earthen material and then donate the land for nominal consideration for use as a youth soccer facility the ultimate objective will be principally to remove the valuable earthen resources and not to complete the proposed project. Absent this earth removal element (which the town believes is substantially overstated and unnecessary), the project cannot go forward and is not financially feasible. Were MassHousing to determine that the site is acceptable, the Town would want an assurance that all earthen material removed from the site be accounted for and that the necessary funds derived from the mining activities be maintained in an escrow account to prevent the funds from being temporarily diverted or used elsewhere and then the project delayed or abandoned.

4. Miscellaneous Critiques of the Application & Project

In addition to the foregoing, there are significant environmental limitations on the site. As noted by the developer but not explained in any detail, 9.2 acres of the 15.1 acres of the property is located in Endangered Species Habitat of the Eastern Box Turtle under the Massachusetts Endangered Species Act (MESA) and possibly other species of protected wildlife and plant species – although the applicant did not detail what wildlife or plant species' habitats were involved.

In all likelihood given the scope of the proposed project, to be eligible for a final Conservation & Management Permit, the applicant must first assess alternatives to both temporary and permanent impacts to state-listed species and if the Project cannot be redesigned to avoid a "Take" it may not be eligible for a final Conservation & Management Permit which will preclude this Project. **Those issues should be explored before the Town of Marshfield is asked to consider this Project and are an essential element to preliminary layout of a Project.** In all cases, before the site eligibility is determined, the applicant should be asked to layout, design and implement a conservation and management plan that provides a long-term net benefit to the conservation of the affected state-listed species. It is unlikely given the extent of development (and even the ongoing work on the site including some stump burial), there will be no way to implement on site any way to provide a Net Benefit to the Eastern Box Turtle or any other species on this site with this type of development.

Attached hereto are the further documents:

- a. *Recommendations of the Marshfield Housing Partnership dated January 26, 2016*
 - Inconsistencies in the Application as to units

- Square footages are smaller than recommended in LIP guidelines
- Lack of emphasis on 2 bedroom units
- Inadequate bathroom space in larger units
- Lack of Experience on the part of the Applicant in constructing and managing a project
- No play space for children and lack of recreation space
- Traffic safety issues

b. Bridle Path Review by Greg Guimond Town Planner 1/7/16.

- Site Development and earth removal implications
- No public transportation and remote distance of MBTA station
- Existence of wetlands
- Aquifer concerns
- Traffic safety measures

c. Review for Water department issues by Rod Procaccino

- Wastewater generation will have 8ppm nitrogen loading
- Limitations on use of 5 acres parcel
- Validity of Conservation Management Plan
- Plan will interfere with Town's pipe to stormbasin
- Lack of detail on earth removal

d. Cease and Desist Letter from Building Commissioner 2/1/16.

- Earth removal ongoing without permits
- Validity of draft Conservation and Management Permit

In closing, the Town of Marshfield is a community which considers its affordable housing needs and responsibilities seriously. There is no track record of denial of affordable housing projects or issuance of permits for housing with unreasonable conditions. This project; however, is inappropriately designed and located and as a consequence most likely have ardent opposition from local officials and an already vocal group of abutters whose comments will be gathered by the Town and submitted when appropriate

Without substantial changes to the submission, it is the position of the Town that Mass Housing should reject the submission and not obligate the Town or its officials, boards

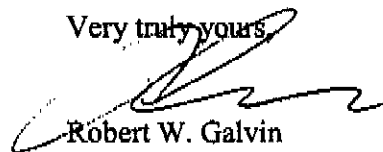
MassHousing
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and committees to spend scarce resources on a plan that cannot receive the required findings.

The Board of Selectmen is opposed to this proposal for the reasons spelled out above and supports the additional comments from various town boards and departments that I have attached for your convenience.

Thank you again for the opportunity to comment. We look forward to hearing from you on this issue. Should you have any further questions or concerns, please do not hesitate to contact my office

Very truly yours,



Robert W. Galvin
Marshfield Town Counsel

cc: Rocco Longo, Town Administrator